

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AXEL MARZLUF

Appeal No. 2000-1319
Application No. 08/553,345

ON BRIEF

Before HAIRSTON, JERRY SMITH, and DIXON, **Administrative Patent Judges**.
DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-5 and 7. The examiner has indicated that claim 6 would be allowable if rewritten in independent form. Additionally, the examiner has withdrawn the rejection of claim 4 under 35 U.S.C. § 102.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a method and device for recognition of tape cassettes having different playing times. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. Method for determination of the cassette type of a cassette which contains a recording medium in the form of tape, for recording and/or replaying information using an apparatus having a measurement device for measuring the tape thickness and the tape length of the recording medium and for producing a control variable for indicating the cassette type or for initiating cassette-type-dependent functions of the apparatus, comprising the following steps:

- a) a value for the tape thickness is determined in a first step,
- b) a value for the tape length is determined in a second step,
- c) the cassette type is determined in a third step,
 - 1) by logically linking the value for the tape thickness and a value for the tape length to one another or
 - 2) by determining that a cassette type differs from another cassette type in reel hub diameter.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Suzuki

4,217,615

Aug. 12, 1980

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Claims 1-4 and 7 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-3 and 7 stand rejected under 35 U.S.C. § 102 as being anticipated by Suzuki. Claim 5 stands rejected under 35 U.S.C. § 103 as being unpatentable over Suzuki.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 25, mailed Feb. 16, 2000) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 24, filed Dec. 6, 1999) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

35 U.S.C. § 112, SECOND PARAGRAPH

The examiner maintains that line 11 of claim 1 is indefinite as to whether the reference to "a value for the tape length" is the same as that set forth in line 8 of claim 1. (See answer at page 4.) We agree with the examiner that the express

is used to determine the cassette type or whether a different determined value is used in the third step. Appellant argues that "there is no addition involved and the recited value for length is step (c) 1) is the same as that in step (a)." Appellant submits that "the informality may be corrected by changing 'a value' to 'said value' in step (c)1)." Appellant does not provide support for the above conclusion that the values must be the same in the calculation, especially since the specification clearly identifies that the calculations need only be sufficiently accurate. The specification at page 9 states that "it is not necessary to determine the tape length L accurately for the determination of the cassette type according to the invention." Additionally, appellant admits that step (c)1) should state "said value," but appellant did not seek to correct this acknowledged error prior to filing of the appeal. Therefore, we agree with the examiner that independent claim 1 is unclear as to whether the same determined length of the tape is used to determine the cassette type, and we sustain the rejection of claim 1 and its dependent claims 2-4 and 7.

35 U.S.C. § 102

Appellant argues that Suzuki does not teach all of the steps and the sequence of the steps. (See brief at page 4.) We disagree with appellant. The examiner maintains that Suzuki teaches this determination of thickness of the tape and the determination of the length of the tape in that order. (See answer at pages 5-6 and

at col. 1 and the calculations at columns 4 and 5. Since Suzuki teaches that the calculated thickness is used to calculate the length, it necessarily follows that thickness is determined prior to the length determination. (See answer at pages 8-9.)

Additionally, the examiner relies upon the teachings of Suzuki at col. 1 that "[c]assette tapes can be classified according to the thickness into three kinds . . . and according to the entire length of the tape into five kinds." Furthermore, Suzuki teaches that the values of thickness and length are automatically determined. It is our understanding that Suzuki teaches 15 classifications of tapes (three kinds times five kinds) where the thickness and lengths would be logically linked to each classification and that the cassette type is determined therefrom. Since Suzuki teaches one of the two alternatives in step (c), Suzuki teaches the method as recited in claim 1, and we will sustain the rejection of independent claim 1 and dependent claim 3 which appellant elected to group with independent claim 1. Appellant argues that Suzuki requires that hub diameter be known or input. Appellant argues that the present invention eliminates this burden. (See brief at page 5.) This argument is not persuasive since hub diameter is not required by the use of alternative language in step (c), and the steps of the method do not specifically identify that the burden of knowing the diameter is not required .

Appellant argues that the thickness is determined only sufficiently accurately

(See brief at page 5 and 6.) While Suzuki teaches the calculation of thickness, Suzuki also teaches only set classes of thickness and of length. It would have been apparent to skilled artisans that each calculation would have been sufficiently accurate to determine whether the value was one of the three kinds of thicknesses or five kinds of lengths. Therefore, this argument is not persuasive, and we will sustain the rejection of claims 2 and 7.

35 U.S.C. § 103

The examiner maintains that it is notoriously old and well known in the art to substitute a logic circuit for human logic in the same field of endeavor and that it would have been obvious to one of ordinary skill in the art at the time of the invention to have an evaluation circuit perform the logical linking of the thickness and length determinations. (See answer at pages 6-7.) We disagree with the examiner's position. We find no support for the examiner unsupported conclusion that a skilled artisan would modify the teaching of Suzuki to incorporate an evaluation circuit which determines whether cassette types which differ from one another in reel hub diameter can be identified by logically linked thickness and lengths which have been determined. Therefore, the examiner has not established a ***prima facie*** case of obviousness, and we cannot sustain the rejection of independent claim 5.

CONCLUSION

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To summarize, the decision of the examiner to reject claims 1-4 and 7 under 35 U.S.C. § 112, second paragraph is affirmed; the decision of the examiner to reject claims 1-3 and 7 under 35 U.S.C. § 102 is affirmed; and the decision of the examiner to reject claim 5 under 35 U.S.C. § 103 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRM-IN-PART

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